



# **MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 46**

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## **FABRICATION SERVICES**

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This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers engaged in fabrication. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Service Provider Tax Law is found in Part 4 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

### **1. FABRICATION SERVICES IN GENERAL**

Fabrication services are taxable under the Service Provider Tax. “Fabrication services” means the production of tangible personal property for consideration for a person who furnishes, either directly or indirectly, the materials used in that production.

“Fabrication services,” includes those services that result in the production of tangible personal property or that constitute a step in a process or series of operations that result in the production of tangible personal property that did not originally exist. “Fabrication services” includes any process whereby raw materials, components, sub-assemblies, or parts that are owned or furnished by the purchaser are assembled to create a new functioning unit. Charges for fabrication services are subject to the service provider tax whether the purchaser or a third party, at the direction of the purchaser, furnishes the materials.

Examples:

- A customer supplies a carpenter with lumber and wants cabinets made from this lumber.
- A customer supplies a quilt top, backing, and batting and wants a quilt made from this material.
- A customer supplies fabric to a seamstress and asks for drapes to be made from the material.
- A customer brings logs to a mill and wants boards made from the logs.

- A customer supplies the head of a moose to a taxidermist to be stuffed and mounted.
- A customer supplies green pottery to a person to be fired and cured.
- A customer supplies wool from a sheep and wants yarn to be carded and spun.
- A customer supplies steel and wants it cut, shaped, drilled, and formed.
- A customer supplies paper to a printer to produce an advertising pamphlet.
- A paper mill supplies logs to a chipper and requests that the logs be chipped into biomass fuel.
- A customer supplies a ring to a jeweler and asks that it be made into a broach.
- A customer's shirt is monogrammed with the customer's business logo
- A customer's ring is engraved with the customer's initials

All fabrication services performed in Maine are subject to the service provider tax. This applies to out-of-state customers who send a product into Maine upon which fabrication labor is performed, even though the product is returned to the customer at an out-of-state location.

The following are examples of the types of services that do not transform or convert the form, composition, or character of the materials provided by the customer, and therefore do not constitute fabrication services:

- Tinting windows – tinting material is added to a customer's car window
- Lettering/painting/drawing on vehicles – a customer's business name is painted on the side of the customer's vehicle.

Neither of the above lists is intended to be all-inclusive, and failure to include a particular service in these lists should not be construed as a determination by MRS that the service is or is not subject to tax. Doubtful cases should be referred to MRS for an advisory ruling.

For services associated with the sale of tangible personal property, see Instructional Bulletin No. 39 "Sale Price Upon Which Tax is Based" for additional information.

## **2. REPAIR SERVICES**

"Fabrication services" does not include the repair, refurbishing, or reconditioning of tangible personal property to refit it for the use for which it was originally produced as long as such services are separately stated from the charge for repair parts or other tangible personal property sold in connection with the repair service.

The following are examples of the types of services that constitute repair services rather than fabrication services and are not subject to the service provider tax:

- Reupholstering furniture
- Refinishing furniture
- Rust removal
- Sanding and/or repainting tangible personal property

- Sharpening saw blades

### 3. APPLICATION OR INSTALLATION SERVICES

“Fabrication services” does not include a charge for attaching, affixing, installing, or applying a completed item of tangible personal property to other tangible personal property or to real property as long as such services are separately stated from the charge for tangible personal property sold in connection with the service.

The following are examples of the types of services that constitute application or installation services rather than fabrication services and are not subject to the service provider tax:

- Framing services –the labor charge for attaching a customer’s piece of art to a frame
- Installing kitchen cabinets in a residence – the labor charge by a carpenter to install kitchen cabinets that were provided by the customer
- The labor charge associated with painting a building

### 4. EXEMPT SALES OF FABRICATION SERVICES

The service provider tax does not apply to sales of fabrication services in the following situations:

**A. Fabrication of exempt commodities.** The tax does not apply to charges for fabrication of tangible personal property where a sale to the consumer of the tangible personal property being fabricated is exempt or otherwise not subject to tax. Examples of exempt fabrication services are:

- i. fabrication of machinery or equipment for use directly and primarily in production of tangible personal property for later sale or lease
- ii. fabrication of ingredients or component parts of tangible personal property produced for later sale or lease and
- iii. fabrication of food products for home consumption.

**B. Fabrication for exempt organizations.** The tax does not apply to sales of fabrication services to the federal government, the State of Maine or its political subdivisions (such as counties, cities, or towns) or any agency of any of the above governments; or to any other entity (such as a school, church or hospital) that has been issued an exemption certificate by MRS.

**C. Fabrication of tangible personal property for resale.** The tax does not apply to fabrication of tangible personal property for a purchaser who will resell it in the form of tangible personal property, unless the subsequent resale of the property will be at casual sale. Persons making sales of fabrication services for resale should require the purchaser to furnish a resale certificate.

**D. Additions to real property.** “Fabrication services” does not include the transformation of tangible personal property by a person that incorporates the transformed property into real property. Fabrication of tangible personal property that is to be incorporated into real property by the fabricator will be treated as follows:

**i. Passage of title prior to incorporation into real property.** Where the contractor passes title to the tangible personal property before incorporating it into the real property, fabrication services are subject to the tax. For example, a cabinetmaker contracts to fabricate and install kitchen cabinets. If the contract provides that the purchaser takes title to the cabinets before installation, the full amount of the sale, including fabrication services, is subject to the tax. A sheet metal shop contracts to fabricate and install ductwork into real property. If the contract provides that the purchaser takes title to the ductwork before installation, the full amount of the sale is subject to the tax. In both cases, installation service is not subject to the tax if it is separately stated on the invoice to the customer.

**ii. Passage of title after incorporation into real property.** Where the contractor passes title to the tangible personal property after incorporating it into the real property, fabrication services are not subject to the tax. (The State Tax Assessor treats title to the tangible personal property as passing after it has been installed unless the contract specifically states otherwise.) For example, a cabinetmaker contracts to build and install kitchen cabinets. If there is no title provision in the contract, or if the contract states that title will pass after installation, the cabinetmaker will be liable for tax on the cost of materials. The cabinetmaker will also be liable for the tax on any fabrication services that it may purchase. The same holds true for a sheet metal shop that contracts to fabricate ductwork and install it into real property.

Charges for fabrication of tangible personal property that will be incorporated into real property are subject to tax unless the property is incorporated by the fabricator. See Instructional Bulletin No. 28 “Installing Tangible Personal Property in Real Property” for more information.

**E. Casual or isolated sales of fabrication services.** Sales of fabrication services made by a person who does not engage in making such sales in the ordinary course of repeated and successive transactions of a like character do not fall within the definition of “retail sale” and are therefore not taxable.

## **5. PURCHASES BY FABRICATORS**

**A. Machinery and equipment.** The Sales and Use Tax Law provides an exemption for purchases of machinery and equipment and repair parts for machinery and equipment used directly and primarily in the production of tangible personal property for sale or lease. This exemption is applicable not only when the tangible personal property being produced is for ultimate sale or lease by the producer, but also when the tangible personal property is being fabricated for ultimate sale or lease by another. In order to qualify for

exemption on the basis of use in the provision of fabrication services, machinery or equipment must meet all of the following qualifications:

- i. **The property produced must be intended ultimately for sale or lease,** not for use by the owner. For example, use of printing equipment to produce catalogs for a department store that supplies the materials is not a qualifying use, because the catalogs are not intended for sale or lease by the store.
- ii. **The property produced must be intended for sale or lease as tangible personal property,** not as real estate. For example, use of machinery to fabricate structural steel for a contractor who will erect it is not a qualifying use because the steel is not intended for sale or lease in the form of tangible personal property.
- iii. **The machinery or equipment must be used directly in production** of tangible personal property, not in procurement or storage operations or any other activities that are simply incidental, convenient, or remote to production.
- iv. **The machinery or equipment must be used primarily (more than 50% of the time) in production** that meets all of the above qualifications, or in production of tangible personal property intended ultimately for sale or lease by the producer. Machinery or equipment used 50% or more of the time in fabricating tangible personal property that will not be sold or leased is subject to tax.

**B. Ingredient or component part.** Items that will be physically incorporated in tangible personal property and actually pass to the purchaser of fabrication services as an ingredient or component part of tangible personal property may be purchased tax-free by the fabricator since they are effectively being purchased for resale, whether the property is intended ultimately for sale or lease or for use by the customer. Some examples of purchases which would be exempt are staples used by a printer to assemble catalogs; nails and glue used by a cabinetmaker to assemble cabinetry; and sheet metal screws used by a sheet metal shop to fabricate ductwork.

Purchases of items that will become an ingredient or component part of fabricated property **to be incorporated into real estate by the fabricator** are subject to sales and use tax.

**C. Consumed or destroyed.** The Sales and Use Tax Law also provides an exemption for tangible personal property that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale or lease, other than lease for use in this State. Fuel and electricity are specifically excepted from this exemption. In order to qualify for this exemption, an item that is “consumed or destroyed” must have an actual physical life expectancy of less than one year in the use to which it is applied without regard to obsolescence.

In order to be exempt under this provision, items must be consumed or destroyed directly and primarily in production meeting the qualifications set forth in paragraph a, "Machinery and equipment," above. See Instructional Bulletin No. 22 "Manufacturers" for more information.

## **6. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales, Use, and Service Provider Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, ME 04332-1060  
TEL: (207) 624-9693 FAX: (207) 287-6628  
V/TTY: NexTalk 7-1-1  
<http://www.maine.gov/revenue>**

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